HOUSE RESEARCH ORGANIZATION • TEXAS HOUSE OF REPRESENTATIVES
P.O. Box 2910, Austin, Texas 78768-2910
(512) 463-0752 • http://www.hro.house.state.tx.us

HOUSE RESEARCH ORGANIZATION

daily floor report

Tuesday, April 25, 2017
85th Legislature, Number 56
The House convenes at 10 a.m.
Part Two

Twenty-eight bills are on the daily calendar for second-reading consideration today. The bills analyzed in Part Two of today's Daily Floor Report are listed on the following page.

Dwayne Bohac
Chairman
85(R) - 56

HOUSE RESEARCH ORGANIZATION

Daily Floor Report

Tuesday, April 25, 2017

85th Legislature, Number 56

Part 2

SUBJECT: Regulating lightweight vehicles used for package delivery

COMMITTEE: Transportation — committee substitute recommended

VOTE: 11 ayes — Morrison, Martinez, Burkett, Y. Davis, Goldman, Israel, Minjarez, Phillips, Simmons, E. Thompson, Wray

2 absent — Pickett, S. Thompson

WITNESSES: For — Danny Smith, UPS, Inc.; (*Registered, but did not testify*: John Esparza, Texas Trucking Association)

Against — None

On — (*Registered, but did not testify*: Jeremiah Kuntz, Texas Department of Motor Vehicles)

BACKGROUND: Transportation Code, sec. 643.001 defines a "motor carrier" as an individual or entity that controls, operates, or directs the operation of a vehicle that transports persons or cargo over a road or highway.

DIGEST: CSHB 561 would allow the Department of Motor Vehicles (DMV) to issue distinguishing license plates for certain vehicles used by motor carriers to pick up and deliver mail, parcels, and packages. The types of vehicles that would qualify for these license plates would include all-terrain vehicles, golf carts, neighborhood electric vehicles, and others listed in the bill.

License plates issued for such vehicles would have to include the words "Package Delivery." DMV could charge an annual license plate fee of up to $25 and would adopt rules to establish a procedure for their issuance. The bill would prohibit DMV from requiring the registration of these vehicles unless required by other law.

A motor carrier could operate a vehicle with these plates, for the purpose of picking up or delivering mail, parcels, or packages, on public highways, other than interstates or controlled- or limited-access roads,

with speed limits of not more than 35 miles per hour. A package delivery vehicle could cross intersections on a road or street with a speed limit greater than 35 miles per hour.

Municipalities could allow motor carriers to operate package delivery vehicles on public highways with speed limits of 35 miles per hour or less located within the boundaries of the municipality or county. A commissioners court also could allow package delivery vehicles to operate on a public highway with a speed limit of 35 miles per hour or less located in the unincorporated area of a county.

A property owners' association could adopt rules for the operation of package delivery vehicles on property regulated by the association.

The bill would control over other statutes in the event of conflict, including those governing vehicle registration and certain off-highway vehicles.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2017.

SUPPORTERS SAY:

CSHB 561 would regulate the operation of package delivery vehicles in Texas. It would establish regulatory conditions to allow for the expanded use of these vehicles, which are quieter and smaller than the trucks they increasingly are replacing in certain settings. Their use is beneficial because compared to traditional delivery trucks, they cause less road damage, have lower emissions levels, and optimize carriers' delivery networks.

CSHB 561 also would allow property owners' associations, municipalities, and counties to establish local regulations on package delivery vehicles, rather than mandating a set of statewide requirements. This would allow individual communities to craft rules they felt were most appropriate for the local operation of package delivery vehicles.

OPPONENTS

No apparent opposition.

SAY:

NOTES: CSHB 561 differs from the bill as filed in that the committee substitute would regulate package delivery vehicles, while HB 561 as introduced would have created a subchapter regulating commercial utility vehicles in a category distinct from golf carts and would have allowed DMV to register commercial utility vehicles for operation on public highways.

SUBJECT: Requiring credit access telemarketers to adhere to no-call list regulations

COMMITTEE: Business and Industry — favorable, without amendment

VOTE: 5 ayes — Oliveira, Shine, Collier, Romero, Villalba

2 nays — Stickland, Workman

WITNESSES: For — Brett Merfish, Texas Appleseed; (*Registered, but did not testify*: Kathryn Freeman, Christian Life Commission; Dixie Davis, League of Women Voters of Texas; Woody Widrow, RAISE Texas; Shanna Igo, Texas Municipal League; Yannis Banks, Texas NAACP; Jennifer Allmon, The Texas Catholic Conference of Bishops; James Thurston, United Ways of Texas)

Against — None

On — (*Registered, but did not testify*: Leslie Pettijohn, Office of Consumer Credit Commissioner)

BACKGROUND: Business and Commerce Code, sec. 304.051 requires the Public Utility Commission of Texas to maintain a no-call list of each consumer in the state who has requested to be on that list or the national do-not-call registry. Sec. 304.052 prohibits telemarketers from making calls to a telephone number on the Texas no-call list.

Sec. 304.004(5) exempts state licensees in certain circumstances from adhering to no-call list telemarketing regulations.

DIGEST: HB 877 would prohibit credit access businesses from making telemarketing calls to consumers on the Texas no-call list, unless:

- the consumer had a current contract with the business; or
- the call took place less than one year after the contract had been terminated and consumer had not requested that the business stop calling.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2017.

SUPPORTERS SAY:

HB 877 would close a loophole in current law that allows credit access businesses to use their status as state licensees to circumvent no-call list regulations. This can result in consumers receiving unsolicited telemarketing calls, which defeats the purpose of the no-call list and creates an inconvenience to people whose privacy and right to deny solicitation should be protected.

The bill would protect consumers from predatory lenders who use telemarketing to lure low-income borrowers into high-interest loans. Credit access loans in Texas can carry annual percentage rates of between 216 percent and 567 percent. Because the state has no limit on how much a person may be loaned or charged for a loan, Texans are particularly vulnerable to predatory lending.

HB 877 would not produce an unfair effect on the lending industry. The bill specifically would target credit access businesses because they lack the stringent consumer protection policies, such as lending caps and borrower requirements, to which competitors such as banks and credit unions must adhere. These competitors would not use the no-call list for telemarketing purposes, so the bill's treatment of credit access businesses would not be unfair.

The bill would not harm free market efficiency because it would not affect the ability of borrowers or lenders to access or issue payday loans in the lending market. It simply would protect consumers who had elected to be on the no-call list from intrusive and unsolicited calls.

OPPONENTS SAY:

HB 877 could create an unfair standard in the lending market by creating a requirement only for credit access businesses, while competitors of credit access businesses who were state licensees still could participate in telemarketing from the no-call list.

In its attempt to protect consumers, the bill could infringe on the free market. Borrowers who use credit access businesses may have no other

option to access capital. Consumers are responsible for being aware of the policies and rates of loans they take out and should not require the government to make these decisions for them.

SUBJECT: Appointing a receiver for a utility violating a district court final judgment

COMMITTEE: Natural Resources — committee substitute recommended

VOTE: 8 ayes — Larson, Phelan, Ashby, Kacal, T. King, Lucio, Nevárez, Price

0 nays

3 absent — Burns, Frank, Workman

WITNESSES: For — Connie Esparza, Castlewood; Steven Adame Sr., Marva Humber, and Carmen Schnur, Castlewood Civic Club; Patrick LeBlanc and Wanda LeBlanc, Castlewood Subdivision; Jim Boyle; (*Registered, but did not testify*: Juan Deleon, Elvira Herrera, Mallory Herrera, Cipriano Ramon, Alex Rios, Antoonio Schnur, Belong Truong and Southivone Truong, Castlewood Civic Club; Raquel Deleon and Lee Gibson, Castlewood Subdivision; Richard Cantu and Veronica Sanches, East Aldine Management District; Ned Munoz, Texas Association of Builders; Leonard Aguilar)

Against — (*Registered, but did not testify*: Jess Heck, SouthWest Water Company; Lara Zent, Texas Rural Water Association; Charlie Schnabel)

On — Amy Davis and Emily Petrick, Office of the Attorney General; Tammy Benter, Public Utility Commission of Texas; Meaghan Bailey and Jess Robinson, TCEQ; (*Registered, but did not testify*: Anthony Grigsby, Office of the Attorney General)

BACKGROUND: Water Code, ch. 13 establishes regulations for rates and services of retail public utilities that provide water or sewer services. Sec. 13.412(a) requires the attorney general, at the request of the Public Utility Commission (PUC) or the Texas Commission on Environmental Quality (TCEQ), to bring suit to appoint a receiver to collect the assets and carry on the business of a water or sewer utility that:

- has abandoned operation of its facilities;
- informs PUC or TCEQ that the owner is abandoning the system;

- violates a final order of PUC or TCEQ; or
- allows its property to be used in violation of a final order of the PUC or the TCEQ.

Water Code, ch. 7 establishes TCEQ administrative enforcement abilities for entities including water and sewer utilities.

Health and Safety Code, ch. 341 establishes minimum standards of sanitation and health protection measures for entities including retail public utilities.

DIGEST:

CSHB 294 would require the attorney general, at the request of the Public Utility Commission or the Texas Commission on Environmental Quality, to bring suit to appoint a receiver to collect the assets and carry on the business of a water or sewer utility that violated a final judgment issued by a district court in a suit brought by the attorney general under Water Code, ch. 13 or ch. 7, or Health and Safety Code, ch. 341.

The bill would take effect September 1, 2017.

SUPPORTERS SAY:

CSHB 294 would address pervasive water issues experienced in the unincorporated area of Harris and other counties by subjecting certain bad actor water and sewage utilities to receivership procedures to ensure they could have their facilities taken over by state agencies. These areas have been plagued by poor water quality and periodic loss of service to homes and schools, but service options can be limited in unincorporated areas. Some residents of unincorporated Harris County live on fixed incomes and cannot afford to sue investor-owned utilities, relying instead on state agencies. However, these agencies are limited to recommending receivership only in certain circumstances.

The bill would add language to existing law governing receivership to ensure that even if a utility managed to avoid outright violation of orders from the Public Utility Commission or Texas Commission on Environmental Quality, it would lose management of its facilities if it violated a district court final judgment. The bill would apply only to utilities that managed to do the bare minimum to avoid receivership. Although a utility in Harris County was appointed a receiver, a similar

problem could arise in the future.

CSHB 294 would address concerns about the filed bill by removing language that would have revoked certain management abilities of a utility and adding language that instead would expand on current receivership procedures.

OPPONENTS SAY:

CSHB 294 is unnecessary because the utility in question already has been appointed a receiver through the Texas Commission on Environmental Quality.

NOTES:

The committee substitute differs from the filed bill in that:

- HB 294 as introduced would have created a process to appoint a temporary manager and to revoke certificates of public convenience and necessity for certain utilities; and
- CSHB 294 would establish receivership procedures for water or sewer utilities that violated a district court's final judgment.

A companion bill, SB 1115 by Garcia, was referred to the Senate Committee on Agriculture, Water, and Rural Affairs on March 7.

SUBJECT: Requiring reappraisal of certain property damaged in a disaster

COMMITTEE: Ways and Means — committee substitute recommended

VOTE: 10 ayes — D. Bonnen, Bohac, Darby, E. Johnson, Murphy, Murr, Raymond, Shine, Springer, Stephenson

0 nays

1 absent — Y. Davis

WITNESSES: For — Cheryl Johnson, Galveston County Tax Office; Dale Craymer, Texas Taxpayers and Research Association; (*Registered, but did not testify*: Julia Rathgeber, Association of Electric Companies of Texas; Daniel Womack, Dow Chemical; Annie Spilman, National Federation of Independent Business-Texas; Kaleb McLaurin, Texas and Southwestern Cattle Raisers Association; David Mintz, Texas Apartment Association; Daniel Gonzalez and Julia Parenteau, Texas Association of Realtors; Doug Smithson, Texas Association of Appraisal Districts and Rural Chief Appraisers; Felicia Wright, Texas Association of Builders; Michelle Smith, Texas Association of School Business Officials; Mari Ruckel, Texas Oil and Gas Association)

Against — None

On — Kevin Kieschnick, Nueces County; (*Registered, but did not testify*: Marya Crigler, Texas Association Appraisal Districts, Travis Central Appraisal District)

BACKGROUND: Tax Code, sec. 23.02 allows a taxing unit in an area declared to be a disaster area by the governor to authorize reappraisal of property damaged in that disaster. The final appraised value following the reappraisal is prorated for the time that the property is not damaged.

Sec. 23.02 requires the taxing unit or units to reimburse the appraisal district for any costs imposed by this request.

DIGEST:

CSHB 513 would require the reappraisal of a property that is currently eligible for reappraisal under Tax Code, sec. 23.02, if the Federal Emergency Management Agency (FEMA) estimated the property had sustained 5 percent or more damage as a result of the disaster. A property owner could decline the reappraisal.

Rather than allowing the taxing unit to authorize reappraisal, the bill would require the chief appraiser of the appraisal district to conduct and be reimbursed by the taxing unit for the reappraisal. The appraisal district would have to complete the reappraisal within 45 days after the governor declared the area a disaster area, or as soon as practicable after FEMA completed the damage estimates.

CSHB 513 would authorize the comptroller to adopt rules to administer the bill's provisions.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2017, and would apply only to the reappraisal of property in a disaster area declared on or after that date.

SUPPORTERS SAY:

CSHB 513 would ensure that property owners affected by disasters were not taxed as if the disaster had never happened. Current law merely allows taxing units to request reappraisals, meaning that there is no guarantee that a property owner whose home or business had been wiped out would not have to pay taxes on the full value of the property, despite an immense loss. Due to its diverse geography, Texas leads the nation in the number of federally declared disasters, and this bill is one way the Legislature could provide much-needed disaster relief to property owners.

The bill would increase consistency and fairness in appraisals. Because current law merely allows individual taxing units to request reappraisals, there can be drastic differences between how different taxing units value identical property that has been seriously damaged. Even a single property can be taxed differently by different taxing units, depending on whether the unit has requested an reappraisal.

CSHB 513 would limit the fiscal impact to taxing units. It would apply

only to property with serious damage, as estimated by FEMA, and would affect only a portion of a tax year. Additionally, the state may provide disaster grants, which could assist taxing units that were most impacted.

OPPONENTS SAY:

While CSHB 513 addresses an important issue, it could cause revenue problems for some taxing units. Many major disasters, such as hurricanes, strike late in the summer right before the close of the tax year, when the taxing unit already is low on funds. The reappraisal process required by the bill could significantly delay an already reduced revenue stream for taxing units that had already suffered losses from a disaster. This could cause service interruptions, especially with small taxing units that likely do not have large reserve funds.

NOTES:

Depending on the impact to appraised values across the state, CSHB 513 could impose indeterminate costs to the Foundation School Fund, according to the Legislative Budget Board's fiscal note.

A companion bill, SB 717 by V. Taylor, approved by the Senate on March 27 and referred to the House Ways and Means Committee on April 13.

The committee substitute differs from the bill as introduced in that CSHB 513 would:

- allow property owners to decline a reappraisal;
- require an estimate from FEMA relating to the extent of the damage to the property before the reappraisal;
- require the appraisal district to complete the reappraisal within 45 days after the disaster declaration;
- allow the comptroller to adopt rules to enforce the provisions of the bill.

SUBJECT: Specifying the statute of limitations for aggravated assault

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 7 ayes — Moody, Hunter, Canales, Gervin-Hawkins, Hefner, Lang, Wilson

0 nays

WITNESSES: For — (*Registered, but did not testify*: Elmer Beckworth, Cherokee County District Attorney; Chris Jones, Combined Law Enforcement Associations of Texas (CLEAT); Robert Bland, Ector County District Attorney; Tiana Sanford, Montgomery County District Attorney; Jimmy Rodriguez, San Antonio Police Officers Association; Buddy Mills, Kelly Rowe, Ricky Scaman, R Glenn Smith, Sheriffs' Association of Texas)

Against — None

BACKGROUND: Code of Criminal Procedure, art. 12.03 states that, except as otherwise provided by the chapter, any aggravated offense carries the same limitation period as the primary crime, which is two years for assault. Aggravated assault is a second-degree felony. Code of Criminal Procedure, art. 12.01 sets differing limitation periods for specified felony offenses and provides that the statute of limitations for "all other felonies" is three years.

DIGEST: HB 682 would amend Code of Criminal Procedure, art. 12.01 to specify that the statute of limitations for the offense of aggravated assault was three years. Under art. 12.03, any offense bearing the title of "aggravated" would carry the same limitation period as the primary crime if a limitation period had not otherwise been specifically provided for the aggravated offense under another provision of that chapter.

The bill would take effect September 1, 2017, and would not apply to an offense if the prosecution became barred by limitation before that date. The prosecution of that offense would remain barred as if the bill had not taken effect.

SUPPORTERS SAY:

HB 682 would resolve an apparent conflict in the Code of Criminal Procedure in which one section provides for a three-year statute of limitations for "all other felonies" and another section states that aggravated offenses have the same statute of limitations as the primary offense "except as otherwise provided." For aggravated assault, the primary crime, misdemeanor assault, has a two-year statute of limitations. This bill would give prosecutors, defendants, judges, and investigators greater clarity by explicitly providing for a three-year statute of limitations for aggravated assault cases and removing any ambiguities.

OPPONENTS SAY:

No apparent opposition.

SUBJECT: Extending concurrent jurisdiction of certain municipal courts

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 6 ayes — Moody, Hunter, Gervin-Hawkins, Hefner, Lang, Wilson

0 nays

1 absent — Canales

WITNESSES: For — David Berman, City of Rowlett, Texas; Mike Brodnax, Rowlett police department; (*Registered, but did not testify*: Katija Gruene, Green Party of Texas)

Against — None

BACKGROUND: Code of Criminal Procedure, art. 4.14 and Government Code, ch. 29 establish the jurisdiction of municipal courts. They allow cities with populations of 1.19 million or more and contiguous cities to enter into agreements for concurrent jurisdiction for the municipal courts of either city for fine-only criminal offenses committed at or near the cities' boundaries. This type of concurrent jurisdiction is allowed only for offenses committed on the boundary of the cities or within 200 yards of the boundary. Code of Criminal Procedure, art. 13.045 allows these offenses to be prosecuted in either city.

DIGEST: HB 1264 would expand the ability of cities of 1.19 million or more and cities contiguous to them to agree to concurrent jurisdiction of their municipal courts for fine-only offenses. These cities could enter into such agreements for offenses committed within 2.25 miles of the municipalities' boundaries on a segment of the state highway system that traverses a major water supply reservoir.

This bill would take effect September 1, 2017.

SUPPORTERS SAY: HB 1264 would help protect public safety by facilitating traffic enforcement on the bridges crossing Lake Ray Hubbard. Because the city

of Dallas owns the lake, multiple bridges that cross it lie within Dallas city limits, even though the bridges go into and out of the city of Rowlett and other localities. The lake and its bridges are several miles from the core of Dallas, which led to significant delays when, before 2015, Dallas authorities responded to accidents on the bridges. Since 2015, the lakeside city of Rowlett has operated under an interlocal agreement with Dallas to provide first responders for emergency calls on the bridges.

After Rowlett police started responding to emergency calls on the bridges, it was clear that concurrent jurisdiction of municipal courts in neighboring cities was not broad enough to allow traffic tickets issued on these roadways to be filed in Dallas or Rowlett courts. The requirement that concurrent jurisdiction extend only within 200 yards of a boundary was too small to allow enforcement on the bridges, which vary in length up to roughly two miles. This meant tickets issued to drivers by Rowlett police were meaningless. The inability of Rowlett police to enforce traffic on the bridges makes the heavily traveled area less safe for everyone.

The bill would allow Dallas and Rowlett to agree to concurrent court jurisdiction for tickets issued on the bridges spanning Lake Ray Hubbard. Both cities would have to formally approve the concurrent jurisdiction by entering into an interlocal agreement that would allow officers from Rowlett to file traffic tickets in Rowlett courts. This would not only make tickets enforceable but allow police officers to operate efficiently by using nearby courts, rather than traveling to Dallas.

The unique circumstances of the location of Dallas, Rowlett, and Lake Ray Hubbard and its bridges warrant the extension of current law. This narrowly drawn bill would affect only Dallas, Rowlett, and Lake Ray Hubbard. Allowing Rowlett officers to enforce traffic on the bridges would not confuse motorists. The bridges go in and out of Rowlett and are miles from Dallas proper, and motorists might logically expect an officer from Rowlett, rather than Dallas, to handle traffic enforcement. Rowlett officers would be enforcing fine-only state traffic offenses, so there would be no confusion about whether an officer was enforcing municipal laws.

OPPONENTS SAY:

It could be unwise to carve out one area of the state in which municipal courts could have concurrent jurisdiction in a broader area than the rest of

Texas. Allowing officers from one jurisdiction to enforce traffic laws in another could confuse motorists and lead to questions about whether an officer had the authority to make a stop. Current law keeps these types of agreements close to cities' boundaries so as not to confuse the public about who is the authority in a particular jurisdiction.

SUBJECT: Allowing Alvarado police to enforce commercial vehicle safety standards

COMMITTEE: Transportation — favorable, without amendment

VOTE: 12 ayes — Morrison, Martinez, Burkett, Y. Davis, Goldman, Israel, Minjarez, Phillips, Pickett, Simmons, E. Thompson, Wray

0 nays

1 absent — S. Thompson

WITNESSES: For — Gary Melson, Alvarado Police Department; (*Registered, but did not testify*: Chris Jones, Combined Law Enforcement Associations of Texas)

Against — None

On — Omar Villarreal, Texas Department of Public Safety; John Esparza, Texas Trucking Association

BACKGROUND: Transportation Code, sec. 644.101 requires the Texas Department of Public Safety to establish procedures for the certification of municipal police officers to enforce commercial vehicle safety standards and provides a list of municipalities where police officers are eligible to apply for this certification. Secs. 644.103 and 644.104 allow certified officers to stop, inspect, and prohibit the operation of commercial motor vehicles if the operator or vehicle is in violation of certain safety regulations.

Subsection 644.102(d) allows a municipality to keep a portion of any fines levied under this authority to cover the costs of enforcement, plus an additional 10 percent of the cost.

DIGEST: HB 1570 would allow police officers in the city described in the bill (Alvarado) to be certified by the Department of Public Safety to enforce commercial vehicle safety standards.

This bill would take effect September 1, 2017, and to the extent of any

conflict would prevail over other bills enacted by the 85th Legislature.

SUPPORTERS SAY:

HB 1570 would improve public safety by allowing local police officers in Alvarado to enforce commercial vehicle safety standards. Alvarado is uniquely located on the intersection of Interstate 35 and U.S. Highway 67, two major highways that bring into the city a high percentage of commercial motor vehicles and the associated risks. While the resources of the Department of Public Safety (DPS) are split across several areas, this bill would allow local police to increase enforcement of safety standards in the region, improving public safety.

This bill would allow police officers to apply for certification, but it would not grant it automatically. The rigorous certification process requires a minimum of four weeks of initial training and a recertification process every year. Officers granted authority under HB 1570 would be well trained, acquiring the necessary specialized skills to inspect commercial vehicles.

While the Legislature may be able to make improvements to this program, the state should not pass up this opportunity to take a concrete step toward improving public safety.

OPPONENTS SAY:

HB 1570 would expand a program that allows local police departments to retain a portion of the fines levied, based on their costs of enforcement. However, there is currently a limited ability for the state to ensure that localities keep only that amount, and the Legislature should require additional reports from participating localities before expanding the program. This would ensure that the program was not used as a revenue-generation tool, as officers certified under this section could pull over any commercial vehicle without first establishing probable cause.

The Legislature also should establish objective criteria to determine which localities may participate. The state should base these on data maintained by DPS, such as the frequency of crashes or safety violations, instead of arbitrarily adding individual municipalities into statute on request.

SUBJECT: Allowing a state innovation waiver under the ACA for certain health plans

COMMITTEE: Insurance — favorable, without amendment

VOTE: 9 ayes — Phillips, Muñoz, R. Anderson, Gooden, Oliverson, Paul, Sanford, Turner, Vo

0 nays

WITNESSES: For — Lee Manross, Texas Association of Health Underwriters (*Registered, but did not testify*: Tim Von Kennel, NAIFA-Texas; Annie Spilman, National Federation of Independent Business-Texas; Amanda Martin, Texas Association of Business; Jamie Dudensing, Texas Association of Health Plans; Jennifer Cawley, Texas Association of Life and Health Insurance; Kandice Sanaie, UnitedHealthcare)

Against — (*Registered, but did not testify*: Jack Pierce, TMA)

On — (*Registered, but did not testify*: Doug Danzeiser and Raja Malkani, Texas Department of Insurance)

BACKGROUND: 42 U.S.C. sec. 18022 addresses essential health benefits requirements under the federal Patient Protection and Affordable Care Act. 42 U.S.C. sec. 18022(d)(3) requires the U.S. Secretary of Health and Human Services to develop guidelines to provide for a de minimis variation in the actuarial valuations used in determining the level of coverage of a plan to account for differences in actuarial estimates.

DIGEST: HB 1635 would allow the Texas Commissioner of Insurance to apply to and negotiate with the U.S. secretary of Health and Human Services to obtain a state innovation waiver for small employer health benefit plans of the actuarial value requirements and related levels of health plan coverage requirements imposed under 42 U.S.C. sec. 18022(d)(3), which addresses the allowable variance in actuarial valuations of health plans.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take

effect September 1, 2017.

SUPPORTERS SAY:

HB 1635 would authorize the Texas Commissioner of Insurance to request a state innovation waiver from the federal government to allow small employer health benefit plans to have different actuarial value requirements from those required by the federal Affordable Care Act (ACA).

Federal requirements under the Affordable Care Act impose limitations on the range of actuarial values that a health benefit plan must fall within to comply with federal law, which increases plan expenses and costs for employers. Federal restrictions on actuarial values for small employer health plans create confusion for employers if their plans become noncompliant with federal law and need to be redesigned and re-priced. The bill would allow more flexibility and clarity for employers in setting actuarial values for small employer health plans.

The bill would affect underwriting, not reimbursement rates. Reimbursement rates are negotiated between health insurers and the providers and are not affected by changes to actuarial values. The bill would not affect the essential health benefits required to be provided by plans under the Affordable Care Act and would not change the designation of "metal levels" to plans according to actuarial value. The bill would give small employers more flexibility in fine-tuning a plan to meet the needs of their employees and could result in lower premiums for patients.

OPPONENTS SAY:

HB 1635 could give health insurance companies more leeway over setting certain health plans' actuarial values, which could reduce reimbursement levels for physicians and increase out-of-pocket costs for patients.

The term "actuarial value" refers to the percentage of total average costs for covered benefits for which a plan would pay. Under the ACA, plans have designated "metal levels" that correspond to their actuarial value. For example, a "bronze" plan covers 60 percent of the actuarial value with respect to essential benefits as required under the ACA, while a "platinum" plan covers 90 percent of the actuarial value with respect to essential benefits. Allowing a waiver from these actuarial value

requirements in the ACA could create further confusion for employers.

NOTES: A companion bill, SB 1406 by Creighton, was approved by the Senate on April 19.

SUBJECT: Limiting nondisclosure agreements in settlements with government units

COMMITTEE: Judiciary and Civil Jurisprudence — committee substitute recommended

VOTE: 8 ayes — Smithee, Gutierrez, Hernandez, Laubenberg, Murr, Neave, Rinaldi, Schofield

0 nays

1 absent — Farrar

WITNESSES: For — Donnis Baggett, Texas Press Association; (*Registered, but did not testify*: Vincent Giardino, Tarrant County Criminal District Attorney's Office; Michael Schneider, Texas Association of Broadcasters)

Against — (*Registered, but did not testify*: Christine Wright, City of San Antonio; Ashley Nystrom, City of Waco)

DIGEST: CSHB 53 would prohibit a state or local government unit from settling legal claims against the unit by agreeing to settlements of $30,000 or more if the settlement also included a nondisclosure agreement. An agreement provision that violated these prohibitions would be void and unenforceable. The bill would not affect information that was privileged or confidential under other laws.

The bill would take effect September 1, 2017, and would apply to claims or actions based on causes of action that accrue on or after that date.

SUPPORTERS SAY: CSHB 53 would help ensure transparency and accountability in government actions by prohibiting nondisclosure provisions in settlements of $30,000 or more. This would prevent governments from withholding valuable information from the public and from using taxpayer money to buy the silence of aggrieved parties. Allowing governmental units to withhold the details of a settlement makes it more difficult for taxpayers to monitor government spending.

While legal settlement agreements using taxpayer money are subject to

open records laws, they often lack details about a case. When the settlements include nondisclosure provisions, the actions of the government or its employees can remain undisclosed. Cases against governments can encompass a wide range of issues, from liability for accidents, to business disagreements, to alleged discrimination, to whistleblowing. In some cases, it is the person receiving the settlement, perhaps an employee or member of the public, who can shed light on the actions of government.

For example, if a sexual harassment allegation against a city employee were settled with a nondisclosure agreement, the public, the press, and others might not know what occurred or how the government responded to an allegation. Nondisclosure agreements can allow government units to keep information, including wrongdoing, from the public, which has a right to know how taxpayer dollars are spent and how legal claims are settled.

The bill would not prohibit governments from using the tool of settlements to prevent going to court because parties would still have numerous incentives to settle claims outside the courtroom.

OPPONENTS SAY:

CSHB 53 would remove a valuable tool that units of government may need in some circumstances to settle legal claims in the best interest of the government and the public. For example, a settlement that includes a nondisclosure agreement may be the best way for a government to end a troublesome employment situation in the least expensive way. In other situations, a local elected official could be accused of harassment, and any claim would be paid from the local treasury. The official being sued might agree to a settlement only if it included an agreement that prevented the claimant from continuing to make disparaging remarks in public. In such situations, the government may agree to the nondisclosure agreements to settle cases and protect taxpayers from greater liability, even if the government is not concerned about criticism.

Allowing nondisclosure agreements does not limit the ability of the public to discover the facts surrounding settlements because individuals are not restricted from publicizing the facts of a case before a settlement. Information about the parties to government settlements and their amounts

may continue to be available, even when nondisclosure provisions are included in settlements.

NOTES:

The companion bill, SB 1463 by Huffman, was referred to the Senate State Affairs Committee on March 20.

The committee substitute eliminates provisions from HB 53 as introduced that would have restricted information about settlements from being admissible in certain circumstances.

SUBJECT: Allowing Midlothian to enforce commercial vehicle safety standards

COMMITTEE: Transportation — favorable, without amendment

VOTE: 12 ayes — Morrison, Martinez, Burkett, Y. Davis, Goldman, Israel, Minjarez, Phillips, Pickett, Simmons, E. Thompson, Wray

0 nays

1 absent — S. Thompson

WITNESSES: For — Carl Smith, City of Midlothian; (*Registered, but did not testify*: Chris Jones, Combined Law Enforcement Associations of Texas)

Against — None

On — John Esparza, Texas Trucking Association; (*Registered, but did not testify*: Omar Villarreal, Texas Department of Public Safety)

BACKGROUND: Transportation Code, sec. 644.101 requires the Texas Department of Public Safety to establish procedures for the certification of municipal police officers to enforce commercial vehicle safety standards and provides a list of municipalities where police officers are eligible to apply for this certification. Secs. 644.103 and 644.104 allow certified officers to stop, inspect, and prohibit the operation of commercial motor vehicles if the operator or vehicle is in violation of certain safety regulations.

Subsection 644.102(d) allows a municipality to keep a portion of any fines levied under this authority to cover the costs of enforcement, plus an additional 10 percent of the cost.

DIGEST: HB 1355 would allow police officers in the city described in the bill (Midlothian) to be certified by the Department of Public Safety to enforce commercial vehicle safety standards.

The bill would take effect September 1, 2017, and to the extent of any conflict would prevail over other bills enacted by the 85th Legislature.

SUPPORTERS SAY:

HB 1355 would improve public safety and reduce the damage to roads by allowing local police officers in Midlothian to enforce commercial vehicle safety standards. Three cement plants, a steel mill, and a rail port are located on highways near Midlothian, and the trucks, which are sometimes overweight, increase wear and tear on the city's roads. This bill would allow local police to use mobile weigh stations to enforce weight restrictions. Additionally, the proximity of the city to major highways near fast-growth areas make it a hub for commercial vehicles, bringing additional safety risks. While the resources of the Department of Public Safety (DPS) are split across several areas, this bill would allow local police to increase enforcement of safety standards in the region, improving road quality and public safety.

This bill would allow police officers to apply for certification, but it would not grant it automatically. The rigorous certification process requires a minimum of four weeks of initial training and a recertification process every year. Officers who granted authority under HB 1355 would be well trained, acquiring the necessary specialized skills to inspect commercial vehicles.

While the Legislature may be able to make improvements to this program, the state should not pass up this opportunity to take a concrete step toward improving public safety.

OPPONENTS SAY:

HB 1355 would expand a program that allows local police departments to retain a portion of the fines levied, based on their costs of enforcement. However, there is currently a limited ability for the state to ensure that localities keep only that amount, and the Legislature should require additional reports from participating localities before expanding the program. This would ensure that the program was not used as a revenue-generation tool, as officers certified under this section could pull over any commercial vehicle without first establishing probable cause.

The Legislature also should establish objective criteria to determine which localities may participate. The state should base these on data maintained by DPS, such as the frequency of crashes or safety violations, instead of arbitrarily adding individual municipalities into statute on request.

SUBJECT: Applying open government laws to regional water planning groups

COMMITTEE: Government Transparency and Operation — committee substitute recommended

VOTE: 7 ayes — Elkins, Capriglione, Gonzales, Lucio, Shaheen, Tinderholt, Uresti

0 nays

WITNESSES: For — (*Registered, but did not testify*: David Lindsay, Central Texas Water Coalition; Kelley Shannon, Freedom of Information Foundation of Texas; Katija Gruene, Green Party of Texas; Terri Hall, Texans Uniting for Reform and Freedom (TURF); Michael Schneider, Texas Association of Broadcasters; Joshua Houston, Texas Impact; Zindia Thomas, Texas Municipal League; Donnis Baggett, Texas Press Association)

Against — None

On — (*Registered, but did not testify*: Temple McKinnon, Texas Water Development Board)

BACKGROUND: Water Code, sec. 16.053 requires each of the 16 regional water planning groups to prepare on a five-year planning cycle a regional water plan that includes information on water resources to prepare for drought conditions, further economic development, and protect agricultural and natural resources of that particular region. Following Texas Water Development Board approval, the plan is subsequently incorporated into the state water plan.

DIGEST: CSHB 3027 would make each regional water planning group and any committee or subcommittee of a regional water planning group subject to Texas open meeting and public information laws.

The bill would take effect September 1, 2017.

SUPPORTERS SAY: CSHB 3027 would subject all regional water planning groups and their

committees and subcommittees to open government laws, which is necessary to ensure transparency in the state water planning process. Texas Water Development Board (TWDB) rules currently require meetings of regional water planning groups to be held in accordance with open meetings laws, but some regional planning group subcommittees have not followed this requirement. Further, it is ambiguous as to whether open meetings and public information laws statutorily apply.

Regional water planning groups became more important after the 83rd Legislature established the State Water Implementation Fund for Texas (SWIFT) in 2013. SWIFT is a special fund outside of the state treasury that can be used without further legislative appropriation by TWDB to implement the state water plan. Public input is critical to the regional water planning process because these groups reach decisions on important policy matters for taxpayers and citizens of the regions. This bill would help ensure that the public had a voice in this process.

OPPONENTS SAY:

No apparent opposition.

NOTES:

CSHB 3027 differs from the bill as filed in that the committee substitute:

- would make subcommittees, as well as committees, of regional water planning groups subject to open meeting and public information laws; and
- removed a provision that would have required a planning group to provide an opportunity for public participation, rather than public input under current law, during the preparation of a regional water plan.

A companion bill, SB 347 by Watson, was approved by the Senate on March 22 and referred to the House Committee on Government Transparency and Operation on April 18.

SUBJECT: Allowing TRS members to seek mediation of out-of-network claims

COMMITTEE: Insurance — favorable, without amendment

VOTE: 9 ayes — Phillips, Muñoz, R. Anderson, Gooden, Oliverson, Paul, Sanford, Turner, Vo

0 nays

WITNESSES: For — (*Registered, but did not testify*: Blake Hutson, AARP Texas; Patricia Kolodzey, Blue Cross Blue Shield of Texas; Stacey Pogue, Center for Public Policy Priorities; Robert McLain, Channing ISD; Amanda Martin, Texas Association of Business; Jamie Dudensing, Texas Association of Health Plans; Lee Manross, Texas Association of Health Underwriters; Ann Fickel, Texas Classroom Teachers Association; Clayton Stewart, Texas Medical Association; Brock Gregg, Texas Retired Teachers Association; Curtis Seidlits, Texas State Teachers Association; Dwight Harris, Texas AFT; Monty Exter, Association of Texas Professional Educators)

Against — None

On — (*Registered, but did not testify*: Rick Morris, Texas Attorney Mediators Coalition; Doug Danzeiser, Texas Department of Insurance; Katrina Daniel, Teacher Retirement System)

BACKGROUND: Insurance Code, ch. 1467 governs the out-of-network claim dispute resolution process that applies to preferred provider benefits plans and plans other than health maintenance organization plans administered by the Employees Retirement System of Texas (ERS). Sec. 1467.051 allows an enrollee of a preferred provider benefit plan or a health benefit plan administered by ERS to request mediation of an out-of-network claim above $500.

DIGEST: HB 1428 would extend the out-of-network claim dispute resolution process to certain health benefit plans administered by the Teacher Retirement System of Texas and their enrollees.

The bill would take effect September 1, 2017, and would apply to a health benefit claim issued on or after January 1, 2018.

SUPPORTERS SAY:

HB 1428 would allow active and retired public school employees to seek mediation of an out-of-network claim above $500 by adding them to the existing mediation system for disputing out-of-network health claims. Currently, enrollees in preferred provider benefit plans and the Employees Retirement System have access to this mediation process, and extending access to active and retired public school employees would enhance consumer protection and could save these current and former state employees money. Increasing potential cost-savings for these employees is crucial, especially as the Legislature considers changes to benefits.

OPPONENTS SAY:

No apparent opposition.

SUBJECT: Allowing a captive insurer to provide reinsurance for credit life insurance

COMMITTEE: Insurance — favorable, without amendment

VOTE: 9 ayes — Phillips, Muñoz., R. Anderson, Gooden, Oliverson, Paul, Sanford, Turner, Vo

0 nays

WITNESSES: For — Jeff Haworth, Kubota Tractor Corporation (*Registered, but did not testify*: Karleen Finnegan, Kubota Tractor Corporation; Burnie Burner, Mitchell Williams; Josh Magden, Texas Captive Insurance Association)

Against — None

On — (*Registered, but did not testify*: Jamie Walker, Texas Department of Insurance)

BACKGROUND: Insurance Code, sec. 964.051 authorizes a captive insurance company to only insure the operational risks of the company's affiliates and risks of a controlled unaffiliated business.

Sec. 964.052 allows a captive insurance company to provide reinsurance to an insurer covering the operational risks of the captive insurance company's affiliates or risks of a controlled unaffiliated business that the captive insurance company may insure under sec. 964.051.

DIGEST: HB 1187 would add credit life insurance and credit disability insurance offered as a part of or relating to the operational risks of a captive insurance company's affiliate as two of the types of insurance for which a captive insurance company could provide reinsurance.

The bill would take effect September 1, 2017.

SUPPORTERS SAY: HB 1187 would clarify in Texas law that a captive insurance company could reinsure credit life and credit disability products offered as part of or directly relating to the operational risks of the captive insurance

company's affiliate. Under the bill, a captive insurance company could reinsure credit life and credit disability insurance on a type of loan made by an affiliate of the reinsurance company that allowed farmers, for example, to purchase farm equipment made and distributed by the company's affiliates.

Credit life insurance is different from life insurance in that it insures only payments on a loan that are left after the buyer dies. Credit disability insurance, similarly, makes payments on a loan if the buyer becomes sick or disabled and is unable to work.

Texas statute is ambiguous as to whether current law applies to this situation, and the bill would provide needed clarification. A majority of states authorize such reinsurance by a captive insurance company, and other states neither expressly permit nor prohibit this type of reinsurance. Making this clarification in statute would allow companies to move their insurance affiliates to Texas.

The bill would specify that a captive insurer could only reinsure these products when they are offered as part of or directly relating to the operational risks of the captive insurance company's affiliate, which would ensure that these products only insured the cost of the company or its affiliate's own risks. Existing Texas law does not state whether this practice was included in the intent and does not prohibit it.

OPPONENTS SAY:

While HB 1187 would allow a captive insurer to provide reinsurance for credit life and credit disability insurance only offered as part of or directly relating to the operational risks of the affiliate, the bill could expand allowed uses of captive insurance reinsurance beyond the originally intended purpose in Texas law. Captive insurance and captive insurance reinsurance are meant to insure a company or its affiliate's own risks, such as the cost of its own equipment and facilities.